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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)	
)	Chapter 11
CIRCUIT CITY STORES, INC., <i>et al.</i> ,)	Case No. 08-35653-KRH
)	Jointly Administered
Debtors.)	

**OBJECTION OF THE ARBORETUM OF SOUTH BARRINGTON
TO DEBTORS' PROPOSED CURE AMOUNT**

The Arboretum of South Barrington (the "Arboretum"), by its undersigned counsel, hereby objects to the Debtors' proposed cure amounts for Debtors' Store No. 4195 at 100 West Higgings Road, South Barrington, Illinois (the "Premises") reflected in Exhibit B to *Debtors' Motion for Orders Under 11 U.S.C. §§ 105, 363, and 365 (I) Approving Bidding and Auction Procedures for Sale of Unexpired Nonresidential Real Property Leases for Closing Stores, (II) Setting Sale Hearing Date, and (III) Authorizing and Approving (A) Sale of Certain*

Nonresidential Real Property Leases Free and Clear of Liens, Claims, and Encumbrances, (B) Assumption and Assignment of Certain Unexpired Nonresidential Real Property Lease, and (C) Lease Rejection Procedures [Docket No. 413] (the “Motion”). In support thereof, the Arboretum states as follows:

1. On or about September 7, 2007, Debtor Circuit City Stores, Inc., as tenant (the “Tenant”), and the Arboretum, as Landlord, entered into a Lease Agreement (the “Lease”) for the Premises. A copy of the Lease is attached hereto as “Exhibit A” and incorporated herein by reference.

2. On September 26, 2008, the Tenant opened for business at the Premises. Accordingly, pursuant to section 2.03 of the Lease, the “Commencement Date” for payment by Tenant to Landlord of rent is September 26, 2008 (the “Commencement Date”).

3. From and after the Commencement Date, the Tenant has failed and refused to pay rent and other charges, including Tenant’s share of real estate taxes, insurance, and common area maintenance charges, each due on the first day of each month, as well as interest charges thereon, all as provided for in the Lease. Thus, for failure to pay rent when due and other reasons, the Tenant was and remains in default of the Lease.

4. On October 27, 2008, and at other times, the Arboretum provided written notice to the Tenant of amounts due under the Lease. In particular, the Arboretum’s October 27 correspondence to the Tenant sets forth monthly amounts due under the Lease as follows:

Rent	\$32,472.58
CAM	\$5,981.79
Insurance	\$427.27
Taxes	\$14,527.21

Based on the foregoing, the total amount of \$53,408.85 is due from Tenant to the Arboretum on the first day of each month after the Commencement Date (including pro rata charges for the

period from the Commencement Date until the rent payment due on October 1, 2008). A copy of the Arboretum's October 27 correspondence to the Tenant is attached hereto as "Exhibit B" and incorporated herein by reference.

5. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code").

6. On November 25, 2008, the Debtors filed the Motion.

7. On December 5, 2008, this Court held a hearing to consider bid procedures for locations including the Premises. At the December 5 hearing, the Court set December 17, 2008, as the deadline for any landlord to file an objection to the cure amounts alleged by the Debtors in the Motion.

8. Section 365(b)(1)(A) requires, among other things, that, "[i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee – (A) cures, or provides adequate assurance that the trustee will promptly cure, such default" 11 U.S.C. § 365(b)(A).

9. Exhibit B to the Motion lists the Premises as among the locations subject to assumption and assignment, or in the alternative, rejection as of December 31, 2008, pursuant to section 365 of the Bankruptcy Code.

10. The cure amount for the Premises listed by the Debtors in Exhibit B to the Motion is inaccurate. Specifically, the Debtors allege a total cure amount of \$55,299.00. In reality, rent and other charges, including Tenant's share of real estate taxes, insurance, and common area maintenance charges, as well as interest charges thereon, are no less than \$171,510.24 through December 31, 2008. A copy of a spreadsheet provided by the Arboretum to the Tenant setting

forth the Arboretum's calculation of amounts due under the Lease through December 31, 2008, is attached hereto as "Exhibit C" and incorporated herein by reference.

11. Additionally, as set forth in written notice provided by the Arboretum to the Tenant on December 10, 2008, the Tenant has permitted various liens to be placed upon the Premises in an amount not less than \$352,588.24. A copy of the Arboretum's December 10 notice to the Tenant is attached hereto as "Exhibit D" and incorporated herein by reference.

12. Based on the foregoing, the correct cure amount due pursuant to section 365(b)(1)(A) of the Bankruptcy Code for the proposed assumption and assignment of the Premises is not less than \$524,098.48 (the "Cure Amount").

13. The Arboretum demands payment in full of the Cure Amount as a condition to the entry of any order permitting the assumption, or assumption and assignment, of the Lease by the Tenant.

14. The foregoing is without prejudice to all of the Arboretum's other rights and claims in these proceedings or in connection with the Premises, including the Arboretum's right to file claims for rejection damages, as well as the Arboretum's other rights and remedies under the Bankruptcy Code and applicable nonbankruptcy law.

WHEREFORE, the Arboretum of South Barrington respectfully requests that the Motion be denied, or in the alternative, that the entry of any order permitting the assumption, or assumption and assignment, of the Lease by the Tenant require payment in full of the Cure Amount set forth in this Objection; and for such other and further relief as the Court deems just and proper.

Dated: December 17, 2008

SEYFARTH SHAW LLP

By: /s/ Alexander Jackins
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CERTIFICATE OF SERVICE

That on the 17th day of December, 2008 I caused the foregoing along with all exhibits to be served upon the following via first class mail, and upon all parties via the Court's ECF system:

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